

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on January 23, 1995,
at 10:00 AM

ROLL CALL

Members Present:

Sen. Ethel M. Harding, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Don Hargrove (R)
Sen. Vivian M. Brooke (D)
Sen. Bob Pipinich (D)
Sen. Jeff Weldon (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: David Niss, Legislative Council
Gail Moser, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB102 HB119
Executive Action: HB102 BE CONCURRED IN
HB119 BE CONCURRED IN AS AMENDED
HB30 BE CONCURRED IN

{Tape: 1; Side: A ; Approx. Counter: 59.7}

HEARING ON HB102

Opening Statement by Sponsor:

REP. JOHN "SAM" ROSE, House District 87, Choteau, stated HB102 is designed primarily to clean up language involving the Department of Military Affairs. Current language makes the payment of uniform allowances to the officers of the Montana Guard mandatory. However, all members of the Montana National Guard are also members of the active reserves of their respective military components, and their uniforms are issued to them.

HB102 requests that the unnecessary language in the current law be eliminated and allows discretionary rather than mandatory issuance of a uniform allowance.

Proponents' Testimony:

Brigadier General Gary Hindoien, Assistant Adjutant General-Air National Guard for the State of Montana, stated the reason for striking the language on lines 13, 14, and 15 is due to Montana National Guard officers being federally recognized officers in either the Army or Air Force. Thereby, they are given a uniform allowance and equipment by the federal government upon commission.

General Hindoien stated that the current mandatory uniform allowance of \$5.00 probably costs more to process than the allowance itself. General Hindoien also stated that leaving the permissive language in the law would allow future realistic uniform allowance payments to junior officers -- assuming the financial resources become available and an appropriately structured program is implemented.

Master Sergeant Roger Hagan, representing the Officer and Enlisted Associations for the National Guard of Montana, stated his organization's support for discretionary payment of the Montana National Guard Officer Uniform Allowance due to the cost of issuing the current mandatory \$5.00 allowance.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. ROSE stated the purpose of HB102 is to remove redundant language.

CHAIRMAN HARDING closed the Hearing on HB102.

HEARING ON HB119

Opening Statement by Sponsor:

REP. JOE QUILICI, House District 36, Butte, said that HB119 was requested by General Pendergast to authorize the Adjutant General to adopt rules for the armed forces of the state. For many years, the Adjutant General has been adopting rules, but HB119 will clarify the legality of that practice. REP. QUILICI

explained the purpose of new section 3 regarding the retroactive applicability of HB119 to 1974. **REP. QUILICI** stated the Department of Military Affairs was mandated by the new Constitution in 1972, but it took two years to get that Department up and running. Therefore, 1974 is when rules began to be promulgated, and new section 3 should eliminate any future challenge to the adoption of rules since that time.

Proponents' Testimony:

Brigadier General Gary Hindoen, Assistant Adjutant General-Air National Guard for the State of Montana, stated HB119 was taken before the Governor. After the Governor's staff completed a process of legal review and meetings between the Governor and General Hindoen's organization, the Governor felt extremely comfortable with HB119.

Master Sergeant Roger Hagan, representing the Officer and Enlisted Associations for the National Guard of Montana, stated that several military regulations either direct or delegate the Adjutant General as the rule-making authority in each state, and HB119 will serve to support those directives from the Army, the Air Force, and the National Guard.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. HARGROVE asked General Hindoen to define the "Armed Forces of the State" as there are both National Guard reserves and active duty. **SEN. HARGROVE** also pointed out that in the title it says "governing the Armed Forces *of* the State," and in paragraph 2 it says "governing the Armed Forces *for* the State."

General Hindoen explained the Armed Forces, as stated in Title 10 of the MCA, are the State Militia which is the Montana National Guard. Reserves are a separate entity in themselves. The Montana National Guard is made up of two organizations: The Army National Guard and the Air National Guard. When joining the National Guard, allegiance is sworn to three organizations simultaneously: the Montana National Guard, the National Guard of the United States, and either the U.S. Army Reserve or the U.S. Air Force Reserve. **General Hindoen** said, however, he could not explain the difference between the words "of" and "for."

SEN. HARGROVE said he had a problem with the phrase "for the state", and asked David Niss if it could be corrected administratively to "of the state." **David Niss** said "Armed Forces of the State" is language that is used throughout Title 10 of the MCA but without definition to refer to the Militia.

Mr. Niss said he didn't think it would be any trouble to change to the phrase "of the State."

SEN. MESAROS asked the General if there has been or will be a direct review through the Governor's Office in the rule-making process. **Brigadier General Gary Hindoiien** said, to his knowledge, there has not been a review by the Governor's office of rules adopted to this point. **General Hindoiien** stated the Department of Military Affairs would not oppose implementation of a review process if it were requested of them.

SEN. WELDON asked David Niss if there is anything that places these rules for the Department of Military Affairs under the Montana Administrative Procedures Act (M.A.P.A). **Mr. Niss** explained there is a definition in Title 2, Chapter 3 which specifically excludes the Department of Military Affairs. Therefore, no M.A.P.A. Hearing is required in order for them to adopt rules.

SEN. WELDON asked for clarification regarding the effect of the retroactive applicability of the rule-making authority. If HB119 is passed, will it state that the 54th Legislature grants the rule-making authority and believes that the agency has had rule-making authority since 1974 with no hearing requirement, notice requirement, etc. **COMMITTEE MEMBERS** concurred with Senator Weldon's comments. **SEN. WELDON** added that Representative Cobb had a resolution that noted even if an agency is not under the Montana Administrative Procedures Act, their rules should be reviewed by the Governor. **SEN. WELDON** asked General Hindoiien, what is the reason for not putting the Department of Military Affairs under the Administrative Procedures Act. **General Hindoiien** stated he believes the reason the Department of Military Affairs does not fall under M.A.P.A., is because of the purely military nature of the duties and responsibilities of the Department and the need to act and react in times of crisis.

Closing by Sponsor:

REP. ROSE said he agreed that line 16 should be amended from "for" to "of".

CHAIRMAN HARDING closed the Hearing on HB119.

EXECUTIVE ACTION ON HB119

Motion/Vote: **SEN. FOSTER** moved that HB119 BE CONCURRED IN and **SEN. FOSTER** moved TO AMEND HB119 (LINE 16, STRIKE "for" and INSERT "of". The MOTION TO ACCEPT THE AMENDMENT CARRIED UNANIMOUSLY on oral vote.

Discussion: SEN. WELDON explained his concerns regarding the various agencies that are exempted from M.A.P.A. and the effect these exemptions have on the due process protections of the Constitution as manifested in M.A.P.A. SEN. WELDON stated that legislators need to be mindful of these types of exemptions because if the belief is that before life, liberty, and property is affected, there should be due process of the law, then we should be true to that principle.

SEN. BROOKE said, regarding Representative Cobb's resolution to review rules and eliminate a percentage of rules, it might be wise to include agencies which are exempt from M.A.P.A. This would provide a review and possible elimination of some rules. SEN. BROOKE stated, however, she didn't know how inclusion of those exempt agencies would be accomplished legislatively.

Vote: The MOTION TO CONCUR IN HB119 CARRIED UNANIMOUSLY on oral vote. SEN. FOSTER will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB102

Motion/Vote: SEN. PIPINICH moved that HB102 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on oral vote. SEN. PIPINICH will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB30

Motion: SEN. WELDON moved that HB30 BE CONCURRED IN.

Discussion: SEN. BROOKE commented she had reservations about the fact that it is a composite of a lot more funds to reach the 25% ceiling than she was comfortable with. SEN. BROOKE said her concern is that the sub-funds are relegated to other uses and it stretches the Fund to include them in the 25% investment total. SEN. WELDON asked for clarification that HB30 just codifies current practice. SEN. BROOKE answered yes, but stated the current practice is reviewed by the legislature as to whether it is approved as an appropriate amount.

Vote: The MOTION CARRIED UNANIMOUSLY on oral vote.
01/25/95 information: SEN. BROOKE will carry the bill on the Senate floor.

DISCUSSION ON SB94

David Niss asked that the Committee consider the language in sections 2 and 3 of SB94. He pointed out that the language authorizing the use of a nickname or initials was not the exclusive way a candidate could be identified; that by using the language "sufficiently identified the individual," sections 2 and 3 of the bill allow other names to be used. **Mr. Niss** said he was unsure what other names would "sufficiently identify" the candidate and that that confusion should be solved by the bill.

SEN. BROOKE stated she understood Senator Linda Nelson to say there were *options* of first name, initials, or a nickname so that some identification other than just a last name was included.

CHAIRMAN HARDING agreed with Senator Brooke but added that **Mr. Niss** was explaining that the bill doesn't reflect exactly what Senator Nelson said at the Hearing on SB94.

SEN. BROOKE asked if page 1, line 19 should then say: "the candidate's last name and first name or initials or nickname."

Mr. Niss stated that suggestion would be one option. Another option is for the Committee to take Senator Nelson at her word, and if she meant to cover situations where the candidate uses a nickname or initials for the first name, then the bill should speak only to that situation. If the Committee feels that is still too restrictive (even though that was the example used in the Hearing), allow something broader. **Mr. Niss** explained a suggestion by Senator Weldon that the language on page 2, lines 16 and 17 could read, "a write-in vote must be counted if the vote sufficiently identifies the individual by the candidate's first name, a nickname or initials instead of a first name." The way this proposed amendment language would differ from the example that was used before the Committee at the Hearing is that it would allow the use of *only* the first name.

SEN. WELDON said that was not his intention. He also stated he is convinced that the ballot needs to include the candidate's last name and some sort of individual identifier, initials, first name or nickname.

SEN. HARGROVE asked, if the word "sufficiently" remains in SB94, who would be responsible for making this subjective judgement.

CHAIRMAN HARDING said it would be the election judge or a recount board. **SEN. HARGROVE** believes the word "sufficiently" could cause serious problems at some point.

SEN. FOSTER summarized Senators Weldon, Brooke, and Hargrove's comments by stating that page 2, line 16 and 17 (and page 1, line 19 would be coordinated as well) should read "a write-in vote must be counted if the vote identifies the individual by the candidate's last name and first name or initials or nickname, instead of first name."

SEN. FOSTER also stated he was concerned by the fact that Mr. Marsh had completed the appropriate filing process and was the only write-in candidate filed, yet it was determined he could not be identified where voters wrote in only his last name.

COMMITTEE MEMBERS briefly discussed issues and examples related to Senator Foster comments regarding who actually filed for candidacy.

COMMITTEE MEMBERS agreed to have Mr. Niss draft amendments for SB94 and continue discussion on SB94 when those amendments are prepared.

SENATE STATE ADMINISTRATION COMMITTEE

January 3, 1995

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ADJOURNMENT

Adjournment: 10:55 AM


ETHEL M. HARDING, Chairman


GAIL MOSER, Secretary

EMH/gem

Mon
01-23-25

DATE _____

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 23, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 102 (third reading copy -- blue), respectfully report that HB 102 be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

ST Amd. Coord.
Sec. of Senate

P. PINI CH
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 23, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 119 (third reading copy -- blue), respectfully report that HB 119 be amended as follows and as so amended be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

That such amendments read:

1. Page 1, line 16.
Strike: "for"
Insert: "of"

-END-

81 Amd. Coord.
Sec. of Senate

FOSTER
Senator Carrying Bill

201512SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 23, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB30 (third reading copy -- blue), respectfully report that HB30 be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

SA Amd. Coord.
Sec. of Senate

Brooke
Senator Carrying Bill

201509SC.SRF

BILLS BEING HEARD TODAY: H.B. 102 - H.B. 119
H.B. 30

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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY